

The University of Chicago

THE STATE OF NATURE
AND THE DECLINE OF LOCKIAN
POLITICAL THEORY IN
ENGLAND, 1760-1800

A PART OF A DISSERTATION SUBMITTED TO
THE FACULTY OF THE DIVISION OF THE
HUMANITIES IN CANDIDACY FOR THE
DEGREE OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF ENGLISH LANGUAGE AND LITERATURE

1936

By
HENRY V. S. OGDEN

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1760-1800

IN 1690, when Locke published his *Two Treatises of Government*, he stated the theory of natural rights in the form in which it dominated English political theory for the next seventy years. By 1800 the theory of natural rights had lost virtually all its English adherents. Its place was taken by various forms of utilitarianism, especially the utilitarianisms of Burke, Paley, and Bentham.¹ There were, of course, many causes affecting the decline of the vogue of the theory of natural rights. Ethical ideas lying at the base of political thought changed and caused political ideas to change with them. The exigencies of new political situations called forth new ideas and new attitudes toward old ideas. In this paper we are concerned with the change which the conception of the "state of nature" underwent during the course of the century and with the effect of this change on English political theory. During the seventeenth century the state of nature had come to be the regular starting point for the political theorist in his description of the law of nature and its relation to political government. The various states of nature of the seventeenth century writers had been alike in that they were primarily abstract and juristic. Whatever sociological or historical detail they possessed was secondary. In the eighteenth century the conceptions of the state of nature tended to become less abstract and more historical, less juristic and more sociological. The juristic

¹ Although the general nature of the change is well known, the history of the process by which it came about has never been fully told. Books like William Archibald Dunning's *History of Political Theories from Luther to Montesquieu* (New York, 1905) and *History of Political Theories from Rousseau to Spencer* (New York, 1933), F. J. C. Hearnshaw's *Social and Political Ideas of Some English Thinkers of the Augustan Age, 1650-1750* (London, 1928), and *Social and Political Ideas of Some Representative Thinkers of the Revolutionary Era* (London, 1931), and C. E. Vaughan's *Studies in the History of Political Philosophy before and after Rousseau* (London, 1925) describe the "political thought" of various writers more or less *in vacuo*, but they do not trace the history of political ideas through the century. Elie Halévy's *La formation du radicalisme philosophique* (Paris, 1901-1904) traces the development of Bentham's utilitarianism, but Halévy touches on other forms of utilitarianism only incidentally. Moreover, he does not deal with the decline of the vogue of the theory of natural rights, as this lies outside the scope of his book. Since this decline is the reverse side of the development of utilitarianism, its place in the history of eighteenth century political thought is of equal importance.

conception of the state of nature upon which Locke based his political theory was displaced by a historical conception of the state of nature, such as Rousseau's *Second Discourse* (1755) described or was believed to describe.

The effect of this on English political theory was threefold. Writers who belonged to the tradition of Locke were forced to modify their theory to suit the historical conception of the state of nature. Writers who opposed the theory of Locke used the new conception of the state of nature to attack the theory of natural rights. Finally, many writers, reacting against the historical conception of the state of nature, and especially against Rousseau's state of nature in the *Second Discourse* denied that there ever was a prepolitical or primitive state of nature as opposed to civil society.

In tracing these developments our starting point must be a brief analysis of Locke's conception of the state of nature and its part in his political theory. We must then describe Rousseau's conception of the state of nature in the *Second Discourse*, both because it was the most ambitious attempt to picture a historical state of nature in some detail, and because it was especially influential in provoking a reaction against the state of nature as a political concept. Next we must consider a group of English critics of the *Second Discourse* who gave currency to the rejection of the state of nature. Finally, we must show how the new conception of the state of nature was used by the political controversialists in England during the latter part of the century.

LOCKE AND ROUSSEAU

Locke's state of nature was highly abstract. It was not a state which existed at any particular time or place. It was not the first stage in the cultural development of mankind. It was not necessarily a primitive state. It was merely the state in which all men exist who are not subject to political government. It was a natural state in that it was contrasted with artificial government, but it was not a state from which other artificial, *i.e.*, man-made, developments were excluded. Locke's state of nature was a juristic state which he used for the purpose of explaining the relationship between the law of nature and natural rights on the one hand, and civil law and civil rights on the other. According to the law of nature, Locke said, men have certain equal rights which they enjoy in the state of nature. For example, they have the right to do anything which tends to their self-preservation as long as they do not interfere with the rights of others. But, Locke reasoned,

individual men in the state of nature cannot enjoy their natural rights because of the interference of other stronger individuals. There is no power to enforce the law of nature. Hence men join together in the social contract to form civil society. They give up their natural right of administering the law of nature, in return for which they receive the protection of society in the enjoyment of their other natural rights. Such in briefest outline is Locke's conception of the state of nature and its relation to his political theory as a whole.

The conception of the state of nature which we find in the *Second Discourse*, published sixty-five years later, in 1755, reflects certain highly significant developments in the history of thought, developments in what may be called sociological knowledge. The *Second Discourse* reflects the conception of history as a growth in which certain stages may be described. It reflects the new interest in studying man with the help of the descriptions of primitive man in the extensive travel literature of the day. As a result, Rousseau's state of nature is conceived as an actual historical condition, the condition in which man must have originally existed.² The state of nature, Rousseau tells us, was the state of man as he came from the hands of nature, possessing none of those attributes which he acquired in any way as a part of his later development. Consequently, if we are to see man as he originally and naturally was, it is necessary to strip off all the accretions of time and art.³ When we do this, we find that man is merely a brutish animal. His only care is self-preservation. His existence is purely sensual; he can perceive and feel, but he cannot think. He lives alone, and having no one to talk to, he cannot speak. He is entirely free from all passions. His chief characteristics are *pesanteur* and *stupidité*. Needless to say, he knows nothing of even the most rudimentary technical arts. He eats acorns and sleeps beneath the oak.⁴ This is pure nature without any art. The antithesis of nature and art is complete.

THE ENGLISH CRITICS OF THE *Second Discourse*

The *Second Discourse* did not enjoy a friendly reception across the Channel. The characteristic British reaction was to label Rousseau's

² The analytical function of Rousseau's state of nature is similar to that of Locke's, but his assumption that it was man's earliest historical state determined its character for him. Once he wavers in this view, admitting that his state of nature may never have existed (*Oeuvres*, ed. Hachette, Paris, 1909-14, I, 79), but he explicitly asserts its historicity several times (*ibid.*, pp. 81, 83, 84, 85), and the whole tenor of his argument implies this view.

³ *Ibid.*, pp. 78, 79, 82, and 83.

⁴ *Ibid.*, p. 85.

state of nature absurd and to deny the antithesis of nature and art. Before going on to the political writers with whom we are directly concerned, let us stop to consider this reaction as exhibited in the writings of William Kenrick, John Gordon, John Brown, and, most important, Adam Ferguson. The significance of these four writers for us is, first, that they showed what the reaction to the *Second Discourse* was likely to be in England, second, that they gave currency to the rejection of the antithesis of nature and art, and finally, that they were a link between the *Second Discourse* and English political theorists. Rousseau provoked these writers to a rejection of any state of nature which was opposed to a developed condition of human society. They adopted the Aristotelian position that the nature of anything is its perfected condition and that therefore there is no antithesis between nature and art.⁵ Applied to the state of nature, this meant that man's original or primitive condition was no more natural than political society. These critics of the *Second Discourse* were by no means the first to reject the antithesis of nature and art, for such notable writers as Shaftesbury, Hume, and Burlamaqui had already rejected the antithesis specifically in connection with political theory.⁶ Shakespeare and Bishop Berkeley had attacked the antithesis in well-known texts.⁷ But the English critics of the *Second Discourse* gave new prominence to the antithesis and to the state of nature at a time when English political theory was entering a period of rapid transition.

William Kenrick was the first of these writers. In his versified *Epistles Philosophical and Moral* (1759), he attacks Rousseau directly:

⁵ See *Politics*, I, 2, 1252-53 (trans. Benjamin Jowett, Oxford, 1921): "When several villages are united in a single community, large enough to be nearly or quite self-sufficing, the state comes into existence, originating in the bare needs of life, and continuing in existence for the sake of a good life. And therefore, if the earlier forms of society are natural, so is the state, for it is the end of them, and the nature of a thing is its end. For what each thing is when fully developed, we call its nature, whether we are speaking of a man, a horse, or a family. Besides, the final cause and end of a thing is the best, and to be self-sufficing is the end and the best. Hence it is evident that the state is a creation of nature, and that man is by nature a political animal." See also *Physics*, II, 8, 199a (trans. R. P. Hardie and R. K. Gaye, Oxford, 1930) and *De partibus animalium*, I, 1, 639b and 641b (trans. William Ogle, Oxford, 1911).

⁶ See Shaftesbury, *Characteristics of Men, Manners, Opinions, Times*, ed. by J. M. Robertson (London, 1900), II, 81-83; Hume, *Treatise of Human Nature*, ed. by L. A. Selby-Bigge (Oxford, 1888), p. 484, and *Enquiries concerning the Human Understanding and concerning the Principles of Morals*, section 258, ed. by L. A. Selby-Bigge (Oxford, 1902), p. 307; and Burlamaqui, *The Principles of Politic Law*, trans. T. Nugent (London, 1752), pp. 19-20, and p. 43.

⁷ *Winter's Tale*, IV, iv, 79-100; *Alciphron: Or the Minute Philosopher*, I, xiv, in *Works of George Berkeley* (Oxford, 1871), II, 48-51.

Let rash polemicks idly prate
Of *nature* and a *nat'ral* state,
The arts of social life despise,
And think that brutes are only wise;
Pretending better had it been
If kings and priests we ne'er had seen;
If lawless, ignorant and wild,
Man had been left, while yet a child,
With brutes to share a common fate;
More blest than in his present state:
Go thou, and act a social part
Man's *nat'ral* state's a state of art.
'Twas *nature*, when the world was young,
Unloos'd our first, great grandsire's tongue . . .
'Twas *nature* gave religion's rule,
And bade the wise conduct the fool. . . .
All this you artificial call,
I heed not empty terms at all.
Call it by whatsoever name,
'Tis *human nature's* special claim.
Say, from mere phrases to depart,
How differs nature here from art? . . .
'Twas nature knowledge did impart,
Which time has ripen'd into *art*:
But call it art, or what you will,
'Tis nature, human nature still.⁸

This line of reasoning is re-enforced in a long footnote, where Rousseau is taken to task by name. After quoting the notorious dictum, "l'homme qui médite est un animal dépravé", Kenrick asks, how came man to think and to be united in society if not naturally? "If by inclination", he answers, "nature evidently prescribed it; if by the necessities peculiar to their species, a state of society was not only prescribed but enforced by nature."⁹ In 1762 Kenrick reviewed the first English translation of the *Second Discourse* in the *Monthly Review*, reiterating the same views and quoting from his own *Epistles* the passage given above.¹⁰

John Gordon's rejection of the antithesis of nature and art and of the original or primitive state of nature occurs in the third part of his *New Estimate of Manners and Principles* (1761). This part is entitled "Of happiness; in which some principles of Mr. Rousseau are examined". Gordon says that Rousseau attributed all man's ills to his desertion of "that simple, uniform, and solitary manner of living"

⁸ *Epistles Philosophical and Moral* (London, 1759), pp. 322-26.

⁹ *Ibid.*

¹⁰ XXVI (1762), 331-42. For the attribution of this review to Kenrick see Benjamin Christie Nangle, *The Monthly Review . . . Indexes of Contributors and Articles* (Oxford, 1934), p. 189.

which nature had prescribed.¹¹ But why should this primitive state be called the state of nature? Such a condition was probably man's earliest state, but it is absurd to suppose that nature meant man to remain in that condition. She has not only furnished the means, but she has imposed on man the necessity of growing out of that state. Moreover, even if it be granted that the original state was the best in respect to man's body, it must be remembered that man's better part, the intellectual, is the determining part. What is natural to man's mind is continual progress: "If, lastly, one part of this Being's nature is so formed, as to be capable of an increase of perfection, from the mere exertion of it's own inherent power; it must of consequence follow, that the happiness of such a Being will be in a state of continual progression from less to greater."¹² There is no stage of man's development to which nature did not direct him, and consequently none is unnatural: "Every different state then, which mankind have either passed through, or at present make their appearance in, has almost an equal claim to the title of *a state of nature*: since it can have been nothing but nature, in one sense or another, which has placed them there."¹³ Gordon's faith in future progress leads him to assert that if any one state deserves to be called the state of nature rather than another, it is the golden age of the future, toward which man is progressing.

While Gordon does not set out to expound a political theory in the *New Estimate*, his belief that man's natural state is a state of progress leads him into a highly significant criticism of Locke's theory of the social contract. Gordon was imbued with the conception of the gradual and progressive growth of human institutions, and he found the idea of a government springing full-fledged from a contract quite uncongenial. He conceived of government as introduced in a very imperfect form to meet the necessary exigencies of social life and as gradually improved by the application of the arts and sciences:

How Necessity does its business, we are all well aware—in a very rough and uncouth manner. The governments it introduced, were such, we may

¹¹ *A New Estimate of Manners and Principles: Being a Comparison between Ancient and Modern Times, in the Three Great Articles of Knowledge, Happiness, and Virtue; both with respect to Mankind at large, and to this Kingdom in Particular* (Cambridge, 1760, 1761), II, 118.

¹² *Ibid.*, p. 122.

¹³ *Ibid.*, p. 119. Gordon's book was reviewed by William Rose in the *Monthly Review*, XXV (1762), 361-68. The review is unfavorable except for Rose's approbation of Gordon's criticism of Rousseau's conception of the state of nature. Rose laughs at Rousseau's "whimsical notion" that savage man "in the true state of nature" is happier than civilized man. For the attribution of this review to Rose see Nangle, p. 164.

suppose, as served, in some degree, to repress injuries; to keep savages in order: but it is owing to Arts and Sciences, that they are become such at length, as rational creatures may with pleasure submit to, without regretting the loss of that original liberty, which, whatever Mr. *Rousseau* may say in praise of it, could never be designed for man to continue in: if it was, nature did her work most bunglingly, that it should be necessary so soon to mend it.¹⁴

The implications of such a passage as this all point toward a utilitarian theory of government. When Rousseau made the state of nature man's actual original condition, he opened the way for an attack on Locke's conception of the contract as well as on the antithesis of nature and art. Gordon's rejection of the antithesis goes hand in hand with his attack on the social contract.

John Brown's criticism of Rousseau's state of nature is to be found in his *Thoughts on Civil Liberty, on Licentiousness, and Faction* (1765). In Brown's opinion the natural liberty of the savage solitary man of the state of nature will generally lead to a "full and unbounded prosecution of all his appetites", a condition far worse than that of the brutes. He argues that this condition is contrary to nature because it prevents the use of those faculties with which man is peculiarly endowed. Society alone gives man's powers free scope, and therefore society is natural to man. After society grows up, new wants arise, and the need for mutual assistance and co-operative effort appears. But this is all the result of man's faculties. Along with the new desires there will come clashing interests and disagreements. These must be settled by such laws as will force the will of each individual to yield to "the common good of all". This beneficial restraint constitutes civil liberty, and its purpose is altogether utilitarian: "Every natural Desire which might in any respect be inconsistent with the general weal, is given up as a voluntary tax, paid for the higher, more lasting, and more important *Benefits*, which we reap from social Life."¹⁵ It is noteworthy that it is natural desires, rather than natural rights, which are given up for the good of the whole. And there is no mention of a contract.

A writer of greater significance than either Kenrick, Gordon, or

¹⁴ *A New Estimate*, II, 41, n.

¹⁵ *Thoughts on Civil Liberty, on Licentiousness, and Faction* (Newcastle, 1765), pp. 12-13. Brown's utilitarian political theory is a natural development from his utilitarian ethical theory. For example, see his definition of virtue in his *Essays on the Characteristics* (1751) as quoted by L. A. Selby-Bigge in his *British Moralists . . . of the Eighteenth Century* (Oxford, 1897), II, 208: ". . . Virtue: Which is no other than 'the Conformity of our affections with the public Good.' Or 'the voluntary Production of the greatest Happiness.'"

Brown was Adam Ferguson, who held the chair of Moral Philosophy at Edinburgh from 1764 to 1785. His political thought is contained in his *Essay on the History of Civil Society* (1767) and his *Principles of Moral and Political Science* (1792), the latter comprising the substance of his lectures at Edinburgh. We need concern ourselves only with the former, since the *Principles* affirms and amplifies the earlier book's position with regard to the state of nature.¹⁶ The *Essay* begins with an attack on the method which many writers, presumably Hobbes and Rousseau among others, had used in their researches on man. Ferguson's first criticism is that such writers base their conclusions on a priori grounds, reasoning back from their conceptions of what human nature is to an alleged state of nature, which has in fact never existed. In every other branch of natural history the historian is obliged to collect the facts, not to build his account on his own presuppositions. The study of mankind should be no exception to this rule. In the second place, such a method is based on the false assumption that to get a true picture of human nature it is necessary to see man in his original state, stripped of all the accretions of artificial development. On the contrary, Ferguson maintains the proper place to view human nature is in its ordinary environment, as it is known to us from experience and history. Human nature is always essentially the same, and nothing is to be gained by neglecting human nature as we find it today in favor of studying an original state of nature of which we know nothing. He remarks that the vogue of this mode of reasoning has gone to such lengths that animals resembling men have been proposed as "the model of our nature in its original state", and he directs the reader to the *Second Discourse* in a footnote.¹⁷

This error in method, he goes on to say, arises from the alleged antithesis of nature and art. "We speak of art as distinguished from nature; but art itself is natural to man."¹⁸ It is part of man's nature to invent and contrive, and he is continually struggling to improve his lot. This factor of human behavior is constant, appearing in the inhabitant of a cave as well as in the lord of a palace. If it be granted that man has

¹⁶ In the *Principles* Ferguson develops a complete system of political theory. It is essentially a restatement of Locke's political theory with the omission of the state of nature. At the date of its publication (1792) it was outside of the main current of English political thought, and for that reason we shall not consider it here. Ferguson's political theory as a whole is discussed in H. V. S. Ogden, *The Rejection of the Antithesis of Nature and Art in English Political Writings, 1760-1800*, unpublished University of Chicago dissertation, 1936, pp. 25-31.

¹⁷ *Essay on the History of Civil Society* (6th ed., London, 1793), p. 7.

¹⁸ *Ibid.*, p. 10.

the desire and the faculties of self-improvement, it is absurd to say that he has left the state of nature whenever he begins to use the faculties which nature has given him. The truth is that whatever man does is natural to him in this sense, and the state of nature exists equally at all times and places, in Great Britain as well as at the Straits of Magellan.¹⁹

THE RADICALS: THE 1770's

We are now ready to consider the effect of these ideas on English political theory itself. For convenience the political writers of our period may be divided into two main groups, the radicals and the antiradicals.²⁰ The radicals were of course the proponents of the theory of natural rights, although they differed from Locke in various matters. In practical politics their objectives were parliamentary reform and annual elections of members of parliament. They were the friends of liberty and sympathized heartily with the American and French revolutions.

The most important radical writer for us was Jackson Barwis, whose *Three Dialogues concerning Liberty* appeared in 1776.²¹ This book contains both a critique of the antithesis of nature and art, ultimately if not directly provoked by the *Second Discourse*, and a scheme of political theory based on the rejection of the antithesis. Published in the same year as Richard Price's famous *Observations on the Nature of Civil Liberty*, it was too late to be a causal influence on the contemporary radical thought of which it was a part. It makes explicit, however, what we might otherwise infer, namely, the connection between the reaction against the historical state of nature, especially as described by Rousseau, and the revision of the Lockian tradition to suit the rejection of the antithesis.

In the first dialogue Barwis lays the ethical foundation for his political theory. His ethics are based on certain "laws of nature", which he derives from such fundamental human impulses as the love between the sexes, the love of offspring, the love of "other more distant relatives", and upon the feelings of humanity, generosity, and benevolence common to all mankind. "All those kind propensities", he asks, "why may

¹⁹ *Ibid.*, p. 12.

²⁰ The term *radical* is here used in its original political sense to designate the proponents of political reform in the direction of democracy. It should not be confused in meaning with *socialistic* or *communistic*. *Radical* is both more accurate and has a broader historical justification than the only alternative term, *Lockian*.

²¹ London, 1776. There were of course earlier publications reflecting the current of radical ideas, notably Joseph Priestley's *Essay on the First Principles of Government* (London, 1768). Priestley mentions the state of nature, but it plays only a negligible part in his political thought.

we not call them *true and natural* laws of our nature?"²² The laws of nature, he says, tell man that he ought to obey his unselfish instincts.

In the second dialogue Barwis discusses the state of nature and the antithesis of nature and art. He asserts that the state of nature is not a prepolitical state in which men live apart from each other, "notwithstanding the discovery of a wild boy or two".²³ It makes no difference whether we consider man in his most "savage and uncultivated state" or in his most "refined and polished", or in any intermediate state. Man is always in his natural state provided he lives in conformity to the laws of his nature. It is customary, Barwis continues, to regard the most primitive state of human existence as the state of nature, supposing man to be more natural as his condition approaches more nearly that of the animals. But this assumption disregards the distinguishing characteristic of the human race, namely, the powers of the mind. Nothing could be more unnatural for man than to live without using his intellect. On the contrary it is natural for man "to form plans of government, and to invent the useful and ornamental arts of life".²⁴ Man is impelled by nature to improve his lot and to progress from a rude to a civilized state. Consequently it is a great mistake to believe that men are no longer in their natural state after they have formed a government.

To drive the matter home, Barwis causes the first speaker to bring up a further difficulty. Government, he says, is accounted a work of art. How then can it be called natural? The answer is that the art by which good government is formed and conducted is in accordance with the laws of nature, and that therefore it is natural. But to get to the root of the matter, it is useless to distinguish between what man effects by instinct and what he does by conscious skill, because art springs inevitably out of human nature and hence is natural to man: "it is impossible to consider the wants and desires of man, and the nature, extent, and capacity of the human mind, and not to perceive that the *natural* result must be art. . . . Art must therefore, in this sense, be *natural* to man".²⁵ With this the first speaker is completely satisfied.

Barwis now proceeds to develop his political theory in a way which shows clearly how the rejection of the antithesis of nature and art and of the state of nature affected the Lockian tradition. In the first place he attacks Locke's conception of the contract. Government, he says, did not originate in a contract made by men in a state of nature but arose gradually and naturally as men found need for it. There never was

²² *Three Dialogues concerning Liberty* (London, 1776), pp. 17-18.

²³ *Ibid.*, p. 43.

²⁴ *Ibid.*, p. 53.

²⁵ *Ibid.*, p. 66.

such a contract. Government is, however, founded on an implied contract which may be inferred from the purpose for which government exists, namely, "the general good or happiness".²⁶ Thus Barwis's criticism of Locke's conception of the contract leads him into a frankly utilitarian position.

In the second place Barwis's rejection of the state of nature enables him to meet one of the major objections of the antiradicals to the radical version of the theory of natural rights. As we shall see, the antiradicals often admitted that men possessed natural rights in the state of nature, but they denied that men retained such rights in civil society. Hinging their argument on the difference between Locke's juristic state of nature and a primitive historical state of nature like Rousseau's, they maintained that the rights of primitive men in a savage and solitary state of nature have no connection whatever with the civil rights of political society. In order to meet this criticism, Barwis asserts that the state of nature includes the state of political society and that government is natural to man. Hence, he reasons, the law of nature and the natural rights derived from it are valid in political society. The natural rights springing out of the laws of nature cannot be relinquished as a part of the tacit contract underlying political society. It follows that all civil laws, to be valid, must be consonant with the laws of nature:

Civil laws were instituted to enforce obedience to the true laws of human nature. Therefore civil laws, which contradict or are repugnant to the true laws of human nature, are not *in conscience* binding. And all civil laws, and all civil magistracies, ought to be formed, altered and corrected, confirmed or abolished, according as they agree with, or are repugnant to, the true laws of human nature.²⁷

This is the doctrine toward which Barwis had been working from the beginning of the first dialogue, and for which he had undertaken the refutation of the antithesis of nature and art.

The remainder of the second dialogue is filled with certain corollaries of Barwis's doctrine of natural rights. The power of the magistrates is derived wholly from the people, and the people retain the power both to designate how the magisterial power shall be used and to recall it altogether. Whenever a government fails to attain its end of protecting natural rights, it should be discarded and a new one set up in its place.²⁸ In stating such conclusions as these, Barwis was merely asserting the popular beliefs of the radical movement.

Barwis differed from the other radical writers, however, in that he

²⁶ *Ibid.*, p. 74.

²⁷ *Ibid.*, p. 74.

²⁸ *Ibid.*, p. 82. The third dialogue is on religious liberty and does not concern us.

was interested in basing his principles of political action on a speculative foundation. The other radicals were chiefly concerned with immediate political reform, introducing political theory only incidentally into their arguments. They did not try to show that natural rights belong to civil man as well as to natural man because civil society is natural to man. They met the antiradical argument by relegating the state of nature to the background or passing it over in silence and by asserting that natural rights are inseparable from human nature. They stressed the inalienability of natural rights, insisting that natural rights are the basis of man's civil rights and that nothing can render them invalid.

Thus Matthew Robinson-Morris, the second Baron Rokeby, makes inalienable natural rights an important part of his defense of the American colonies, but he completely ignores the state of nature. He declares that the "primary, essential, inherent rights of human nature" are bestowed upon man by God, and that nothing can take them from man.²⁹ Another radical writer, Granville Sharp, likewise takes the inalienability of natural rights for granted in his defense of the American colonies. He appeals to self-evident truths in much the same way as Locke had done, but he does not introduce the state of nature. On the contrary, he claims that since natural rights are clear to the reason and common sense of everyone, every man has a right to judge for himself in political controversies in which natural rights are at stake.³⁰ His application of this principle to the American quarrel shows how far he was from admitting any discrepancy between natural rights and civil society.

The most widely read radical pamphlet of the period of the American Revolution was Richard Price's *Observations on the Nature of Civil Liberty* (1776).³¹ Price devotes the theoretical parts of his argument mainly to a discussion of liberty, and in his discussion he takes natural rights for granted without explaining them. He makes clear, however, his conception of natural rights as universal and inalienable rights in a section entitled "Of the Authority of one Country over another". He protests vigorously against the notion that a state may acquire authority over a foreign country by a compact or a cession of

²⁹ *Considerations on the Measures carrying on with respect to the British Colonies in North America* (London printed, Boston reprinted, 1774), p. 7.

³⁰ *A Declaration of the People's Natural Right to a Share in the Legislature; which is the Fundamental Principle of the British Constitution of State* (London, 1774), p. 1.

³¹ According to the *British Museum Catalogue*, Price's pamphlet went through eleven London editions in the first year of its publication as well as one in Dublin and three in America.

natural rights. Such compacts, he argues, are not binding, for civil liberty cannot be surrendered: "Such a cession, being inconsistent with the inalienable rights of human nature, would either not bind at all; or bind only the individuals who make it."³² Furthermore, if men have lost their inalienable rights through such a cession, they may always resume them whenever opportunity offers. There is no reference to the state of nature.

The *Observations* provoked numerous answers,³³ and in the following year Price published his *Additional Observations* in self-defense. Here he takes up the meaning of "the natural equality of mankind" and uses the state of nature as a part of his exposition. He speaks of the state of nature in the present tense and is clearly thinking of a purely juristic state like that of Locke. He uses it, however, only as a device by which he may illustrate clearly certain moral relationships, such as that between master and servant and the like. No man, he says, "is constituted by the author of nature the vassal or subject of another."³⁴ Hence it follows that all men are naturally equal, and equality is one of man's essential rights. "Mankind came with these rights from the hands of their Maker", he asserts, possibly paraphrasing Rousseau's dictum in the *Second Discourse*. Price, however, does not conclude that man gave up his natural right to equality on entering civil society. On the contrary, he says that all governments which do not maintain man's natural equality are founded on a false principle because they imply that some men have an inherent right to rule others. Thus he uses the Lockian state of nature where it suits his purpose, but he does not give it an essential part in his argument. He is at one with the great majority of radicals in focusing his attention on inalienable natural rights.

On the whole the new emphasis which the radicals placed on the inalienability of natural rights may be said to have sprung from two main causes. The first was their desire to support practical reform measures with appeals to natural rights. The second was their desire to obviate the criticism that natural rights are valid only in the state of nature and therefore afford no criterion for political action in civil society. How important this criticism was in the eyes of their opponents we shall see in turning to the antiradicals.

³² *Observations on the Nature of Civil Liberty, the Principles of Government, and the Justice and Policy of the War with America* (7th ed., London, 1776), p. 25.

³³ A list of these is given in Ogden, pp. 161-64.

³⁴ *Additional Observations on the Nature and Value of Civil Liberty, and the War with America* (London, 1777), p. 21.

THE ANTIRADICALS WHO ACCEPTED THE STATE OF NATURE: THE 1770'S

The antiradicals of our period presented more carefully thought out and more variegated analyses of political theory than the radicals. Most of them fall into two classes, according to their attitude toward the state of nature. Those in the first class maintained that the state of nature was an actual historical condition, prior to and distinct from civil society. They adopted the antithesis of nature and art either explicitly or by implication. They were the writers against whom Barwis directed his defense of the theory of natural rights. The writers of the second class rejected the antithesis of nature and art and denied that the state of nature ever existed. Both classes, however, agreed that the appeal to natural rights in civil society is invalid.

The most complete statement of the position of the first class of antiradicals is to be found in Joseph Wimpey's reply to Barwis, *Letters occasioned by Three Dialogues concerning Liberty* (1777). His position is precisely opposite to that of Barwis. He maintains that the state of nature was a state in which man was entirely independent of government. "A man who is in submission to, or a subject of civil government", he declares, "can no more be said to be in his natural state, than a man that is cooped up in a room of a house, can be said to be ranging unbounded fields and groves at his own pleasure."³⁵ He proceeds to consider the relations of nature and art in general and concludes that art is quite unnatural to man. The works of nature, he says, are simple, uniform, "ever effectual to the intended purpose, and always answer to some valuable end".³⁶ On the contrary the works of art are characterized by an infinite variety; they are often "lame, weak, and inadequate". "Often indeed inimical to human nature, and the scourge and curse of mankind", he exclaims. This, however, is not his view of the relative merit of nature and art in the field of political thought:

"That man in a savage or uncultivated state is *in the lowest* and least improved state of human nature," is true, and therefore he may be truly said to be in his simple, original, genuine natural state. But as soon as he enters into society, submits to its laws, instructions are given, arts take place, knowledge and improvement succeed, every step he takes carries him from

³⁵ *Letters occasioned by Three Dialogues concerning Liberty; wherein the Author's Doctrine respecting the State of Nature, is shewn repugnant to Nature; to which are added Remarks on Dr. Price's Additional Observations on the Nature and Value of Civil Liberty* (London, 1777), p. 17.

³⁶ *Ibid.*, p. 39.

his natural state, and as he improves in one, he is constantly receding from the other.³⁷

Wimpey's conviction seems to be that although art is both good and bad, on the whole it is far better than nature, especially in its political manifestations.

The result of his insistence on the antithesis of nature and art is that he denies the validity of the appeal to natural rights by members of civil society. He asserts that men's rights in civil society are not determined by their previous natural rights but by the laws of the state:

Men may amuse themselves with ideas of natural, inherent, inalienable rights, as much as they please; but in a civil or political state, individuals possess no such rights any further than they are compatible with the laws of the state. They cannot oppose their separate wills and private judgments, to the will and judgment of the state, but in all things must submit thereto; even supposing its judgment and will should be founded in error.³⁸

In the fifty-page "Postscript", directed against Price's *Additional Observations*, he couples Barwis and Price in his attack on the radical position. He accuses them of making the mistake of confusing the rights of society with those of nature in their arguments for civil reform: "Like the Author of the Three Dialogues on Liberty, I think he [Dr. Price] confounds Natural Liberty with Civil Liberty, making the rights of men in the latter state precisely the same as in the former, whereas they are as essentially different, as freedom from bondage."³⁹

Wimpey was like Barwis in that he was the only writer of his group to consider the existence of the state of nature explicitly and to argue for the antithesis of nature and art. The other antiradicals who accepted the state of nature tacitly accepted the antithesis of nature and art without an explicit discussion of the general relationship of the two abstractions. They assumed that man had natural rights in his original primitive state of nature, but they denied that he brought them with him into society. John William Fletcher states the argument very clearly in his *American Patriotism farther confronted with Reason, Scripture, and the Constitution* (1776) and attributes Price's view to the influence of Rousseau:

It will be proper here to trace back to its source the error about liberty, which Dr. Price has adopted from *Rousseau*, the great Geneva patriot: A fatal error this, by which that fanciful politician has kindled the flame of discord in his own country. This error consists in inferring, that, because a

³⁷ *Ibid.*, pp. 27-28.

³⁸ *Ibid.*, p. 50.

³⁹ *Ibid.*, p. 55.

savage, who lives alone in a wood, is his own governor, and can legislate for himself; a man, who lives in civil society can do the same.⁴⁰

THE ANTIRADICALS WHO REJECTED THE STATE OF NATURE: THE 1780's

We now come to the antiradicals of the second group, those who attacked the theory of natural rights by rejecting the antithesis of nature and art and by denying the existence of the state of nature. In the 1780's Soame Jenyns made the clearest statement of this position.⁴¹ Edmund Burke, Richard Hey, and an anonymous Irish writer

⁴⁰ *American Patriotism farther confronted with Reason, Scripture, and the Constitution: Being Observations on the Dangerous Politicks taught by the Rev. Mr. Evans, M. A. and the Rev. Dr. Price. With a Scriptural Plea for the Revolted Colonies* (Shrewsbury, 1776), p. 60. Fletcher is quite wrong in attributing this view to Rousseau; see *Contrat social*, Bk. I, ch. viii.

Another excellent expression of this argument occurs in the anonymous pamphlet *Civil Liberty asserted, and the Rights of the Subject defended, against the Anarchial Principles of the Reverend Dr. Price* (London, 1776), pp. 7-8: "Natural Liberty and Civil Liberty are as different as anything can be rendered by different circumstances. In a state of nature where property is not specifically annexed to personality, where every one can feast on the bounties of nature, can gather fruits of this or that tree . . . and knows no bounds but those established by nature, man may be said to enjoy Natural Liberty. But Civil Liberty voluntarily gives up the natural right to boundless range, to enjoy security and peace, the blessings of property annexed to individuals, and protected by general consent and united endeavours. . . . In a state of nature every one extends his enjoyment as far as his will and his powers enable him; but Civil Liberty can extend no further than the laws of the society permit."

Other good texts illustrating this point are: Henry Goodricke, *Observations on Dr. Price's Theory and Principles of Civil Liberty and Government* (York, 1776), pp. 84-86; John Moir, *Obedience the Best Charter; or, Law the only Sanction of Liberty. In a Letter to the Rev. Dr. Price* (London, 1776), p. 8; *Cursory Remarks on Dr. Price's Observation on the Nature of Civil Liberty. In a Letter to a Friend* (London, 1776), p. 2; John Gray, *Doctor Price's Notions of the Nature of Civil Liberty, shewn to be contradictory to Reason and Scripture* (London, 1777), p. 6; John Wesley, *A Calm Address to our American Colonies* (Bristol, 1775), p. 6; *id.*, *Some Observations on Liberty: Occasioned by a Late Tract* (London, 1776), p. 10.

⁴¹ Antiradicals writing before 1780 had denied that the state of nature existed, but I have not found any in the 1760's or 1770's who developed this contention into an extensive argument or who rejected the antithesis of nature and art, except John Gordon in his *New Estimate*, II, 41. And Gordon's political theory was only incidental to his main theme. Allan Ramsay in his *Thoughts on the Origin and Nature of Government* (London, 1769), p. 8, attacks the Lockian maxim "that all men in their natural state are free and independent" by denying the existence of the state of nature: "No history of the past, no observation of the present time, can be brought to countenance such a *natural state*; nor were men ever known to exist in it, except for a few minutes, like fishes out of water, in great agonies, terror and convulsions." Likewise the anonymous *Letter to the Rev. Dr. Richard Price* (London, no date, 1776?), p. 8, denies the existence of the state of nature: "Admitting the truth of your levelling principle, that in a *state of nature* individuals are equal, I deny that such a state ever had, or can have, existence. Man is naturally a social being, and the rudiments of civil government were originally laid in the patriarchal dominion of the father of a family." The idea was used only to a negligible extent as an argument against the radicals before the 1780's.

used it against Thomas Paine in the early 1790's. Jenyns's denial of the existence of the state of nature is in the seventh of his *Disquisitions on Several Subjects* (1782). The part of his argument which concerns us is directed against the conception of an original contract. He objects to the contract theory on the ground that it is merely a device of its proponents to overthrow all government, since it is obvious that there never was in any state an original contract. Governments, he says, are not founded on contracts, but on force, or fraud, or accident, or the "circumstances of the times".⁴² Moreover, in any government, the people always have the right to preserve or to regain their liberty, whenever they can. But this right is quite unimportant and has no bearing on the problem of government. The question is not what right the people have to liberty, but how much liberty they can be allowed without injuring their own interests. Because of the depravity of human nature, the amount of liberty which is good for the people can never be very great. Men need to be protected against themselves by the compulsion of government, and the conception of a contract entirely overlooks this fact. Government originates in necessity not in choice, and it is absurd to argue from the alleged rights man enjoys in the state of nature that government must be based on natural rights.

Having been led by his argument to natural rights and the state of nature, Jenyns turns his attack on the antithesis of nature and art inherent in the Lockian tradition. He objects to the assumption that man's natural state is a primitive prepolitical state. Such a state, he asserts, is purely imaginary, and even if it did exist, it would certainly not be natural. The state of nature is one of society and art: "The natural state of man is by no means a state of solitude and independence, but of society and subordination; all the effects of human art are parts of his nature, because the power of producing them is bestowed upon him by the author of it."⁴³ He goes on to point out that it is as natural for man to build cities and to form governments as it is for birds to build nests, and bees and ants to form social organizations. Government, he asserts, is as natural as it is necessary, and man could no more live without it than could "those social and industrious insects". Jenyns echoes Aristotle's opinion concerning the naturalness of government: "Man is evidently made for society, and society cannot subsist without government, and therefore government is as much a part of human nature, as a hand, a heart, or a head." Just as man frequently puts these organs to bad uses, he often abuses government, but

⁴² *Disquisitions on Several Subjects* (London, 1782), p. 267.

⁴³ *Ibid.*, p. 268.

it can no more be inferred from this that he would be happier without government than that he would be happier without his hand, or heart, or head.⁴⁴

The purpose of government, Jenyns continues, is to attain the happiness of mankind, but its sanction is necessity:

Every man, by the constitution of human nature, comes into the world under such a degree of authority and restraint as is necessary for the preservation and happiness of his species and himself; this is no more left to his choice, than whether he will come into the world or not; and this obligation he carries about with him so long as he continues in it.⁴⁵

Submission to government is essential to humanity, and human nature cannot continue to exist without it. As a result, the principle of consent underlying the social compact is invalid. Such are the conclusions which Jenyns reached through his rejection of the antithesis of nature and art and of the state of nature.

The same conclusions were asserted by another important anti-radical during the early 1780's, Josiah Tucker. In *A Treatise concerning Civil Government* (1781) and in two subsequent pamphlets, *Four Letters on Important National Subjects* (1783) and *A Sequel to Sir William Jones' Pamphlet on the Principles of Government* (1784), he attacks the radical position with all the weapons in the antiradical arsenal. When it suits his purpose, he uses arguments essentially the same as those of Wimpey and Fletcher. But he also uses Jenyns's arguments, and they constitute his real position, for he has no respect for a political state of nature or the antithesis of nature and art. Since he is not as explicit on these matters as Jenyns and since his political theory as a whole has been discussed elsewhere, it is not necessary to consider Tucker's reasoning at length here.⁴⁶

THE REJECTION OF THE STATE OF NATURE IN THE REPLIES TO PAINE'S *Rights of Man*

The trend toward utilitarian political thought which was exhibited in the early 1780's in the writings of Tucker and Jenyns took a decisive step forward with the publication of William Paley's *Principles of Moral and Political Philosophy* (1785) and Jeremy Bentham's *Introduction to the Principles of Morals and Legislation* (1789). Paley's rejection

⁴⁴ *Ibid.*, pp. 269-70.

⁴⁵ *Ibid.*

⁴⁶ See Robert Livingston Schuyler's *Josiah Tucker: A Selection from his Economic and Political Writings, with an Introduction* (New York, 1931), pp. 39-47.

tion of the social contract⁴⁷ and Bentham's attack on the law of nature⁴⁸ both implied a rejection of the state of nature and of the antithesis of nature and art. Neither of these writers, however, made these ideas explicit, and we need not include them in our discussion. Nor is it necessary to go into any of the radical writings of the decade, for the radicals of the 1780's added nothing to the Lockian tradition as we have met it in Barwis and Price.⁴⁹

The radical publication of the 1790's which overshadowed all others was Thomas Paine's *Rights of Man* (Part I, 1791; Part II, 1792). Paine's political theory in Part I is essentially that of John Locke, and his use of the state of nature as well as his conception of it differs in no important respect from that of the earlier writer.⁵⁰ The importance for us of the *Rights of Man* lies in the replies which it provoked rather than in the book itself. As soon as it was published it became the center of a larger and more impassioned controversy than had been aroused by Price's *Observations*.⁵¹ We are concerned with three of the answers: Burke's *Appeal from the New to the Old Whigs* (1791), Richard Hey's *Happiness and Rights* (1792), and an anonymous pamphlet by a Dublin barrister entitled *The Rights of Citizens* (1791). We shall consider the Irish pamphlet first.

The Rights of Citizens is especially significant for us, first because its author reaches a rejection of the state of nature and of the antithesis of nature and art as a direct reaction against the brute state of nature of the *Second Discourse*, and secondly because he uses the *Second Discourse* and the *Contrat social* as sources from which to draw arguments against the theory of natural rights. His method is to take up one by one the points on which he differs with Paine and to prove

⁴⁷ *The Principles of Moral and Political Philosophy in Works of William Paley* (London, 1824), II, 294.

⁴⁸ *An Introduction to the Principles of Morals and Legislation* (Oxford, 1879), pp. 17-18.

⁴⁹ As I hope to show elsewhere, the most important development in radical thought during these years was the unconscious shift of many of the radical writers to a position in which they subordinated the rights of the individual to the general good, thus tacitly adopting a utilitarian position.

⁵⁰ Lois Whitney in her *Primitivism and the Idea of Progress* (Baltimore, 1934), pp. 226-28, finds a strain of primitivism prominent in the *Rights of Man* and an appeal to an original state of nature. I think, however, that these aspects of Paine's book are largely provoked by his desire to answer Burke's appeal to prescription in the *Reflections on the Revolution in France* (London, 1790) with an appeal to an earlier past. In any event, Paine's primitivism is not essential to his theory of natural rights. For a fuller discussion of this see Ogden, pp. 121-28.

⁵¹ For a list of the replies to the *Rights of Man* see Ogden, pp. 164-66.

that Paine's arguments are false. This leads him into considerable repetition, but in general the pattern of his reasoning falls into three parts. First, he argues that natural rights have no connection with civil society but exist only in a state of nature. To buttress this argument, which is the one that Wimpey used against Barwis and Price, he quotes most of the second half of chapter eight of the *Contrat social*, Book I, beginning: "Ce que l'homme PERD [note the expression] par le contrat social c'est sa liberté naturelle."⁵² Second, he argues that though there may have been a state of nature, Paine's natural rights could not have existed in it. He insists that the state of nature was a nonsocial condition in which man lived a solitary life without the possibility of enjoying rights concerning relationships with other men.⁵³ It is here that the influence of the *Second Discourse* is apparent.⁵⁴

Finally he argues that there never was a state of nature, and that there are no natural rights unless we admit that civil society and civil rights are natural. The first two arguments he adopts by way of refutation, but this is his real belief. Its best expression is to be found in his attack on Paine's doctrine of the natural equality of man.⁵⁵ He maintains that equality is so far from being natural to man that the precise opposite is true. "Inequality", he says, "is the work of progressive

⁵² *Rights of Citizens, being an Examination of Mr. Paine's Principles, touching Government* (Dublin, 1791), pp. 19-20.

⁵³ *Ibid.*, p. 81: "a state when there was no sort of society". See pp. 19, 75, 83-85, and 105-106.

⁵⁴ The author quotes directly from the *Second Discourse* on page 83, and other references show that he was thoroughly familiar with it.

⁵⁵ There are other good statements of this position, e.g., *Rights of Citizens*, p. 81, n.: "Whether the state of nature ever had existence except in the minds of theorists is also a question. I am here admitting its existence. When Mr. Paine talks of natural rights, that he means rights in a state of nature, (so as impliedly to assert the existence of such a state,) is evident from his referring us to the creation, (as we shall soon see,) and from his contrasted definitions of natural and civil rights; the former of which appertain, he says, to man in right of his existence; the latter in right of his being a member of society; thus clearly calling our minds to contemplate a state when there was no sort of society, i.e. a state whose existence is problematic. If he states those rights to have been different from what others have stated them to be, it may only follow that he is wrong. This part of my argument then, has shortly this tendency, viz. to shew the existence of a state of nature to be very questionable, and that even supposing it to have had existence, yet the existence of many, nay most, of those rights which civil man hath in such a state of nature is questionable; from thence I would infer the fallacy of Mr. Paine's assertion, that every civil right has for its foundation some natural pre-existing right. The social state is natural; and in this sense only are civil rights natural rights, or founded on them." Cf. also p. 18: ". . . indeed we may think that civil society—with its consequent rights and benefits—is a state to which the human race has a natural inevitable tendency, and in this point of view may call it and its attendant rights natural".

nature.”⁵⁶ By this he means that as men begin to grow more civilized, and as individuals begin to produce more than enough for themselves, they tend to become increasingly unequal in the possession of power and wealth. Social chaos would necessarily ensue if human nature did not have another natural tendency, namely, to regularize and control the tendency to inequality. “Had nature done no more than give to human affairs this bias to inequality, men would only spring up for mutual destruction; but ’twas corrected by another tendency, viz: to social regulations; to durable establishments.”⁵⁷ The author makes quite clear that both these tendencies are *natural*, although they are not part of the original state of nature. They are natural because the term *natural* designates the progressive tendency of anything rather than its original state. In the case of man the alleged state of original nature probably never existed and certainly never continued. The implication is that even if it did exist, it could not be called *natural*: “That is natural, (I repeat it), to which nature tends. . . . That the pure state of nature ever existed is more than questionable: that it should continue, is as monstrous as that a child should never grow from the moment of its birth. Savage life is the infancy of the human species, and civilization its maturity.”⁵⁸ As a result of man’s need for and tendency toward social regulation, inequality is controlled and checked by civil government. This is the work of nature, acting through human beings: “A regulated and subordinate inequality is the fair creation, which nature, working with humane passions, and human reason, has produced.”⁵⁹ The truth, then, about natural equality is just the opposite of Paine’s opinion. It is in a state of political society that we find equality and not in a primitive or imaginary prepolitical state.

The arguments of Richard Hey’s *Happiness and Rights* (1792) are similar to those of the *Rights of Citizens*. Hey not only argues on the assumption that the state of nature is a solitary unsocial state, but he also insists that such a state is unnatural. It is altogether wrong, he says, to call such an unconnected state the state of nature, as distinguished from society. Man’s natural state is not an imaginary unsocial condition but whatever state an individual inherits from his environment:

It appears worse than merely arbitrary, to call such [an] unconnected Situation a state of *Nature*, by way of distinction from a state of *society*. Whatever state I find myself placed in, by the immense train of events over which I have had no controul, and which have made my Situation what it

⁵⁶ *Ibid.*, p. 104.

⁵⁷ *Ibid.*, p. 106.

⁵⁸ *Ibid.*, p. 105.

⁵⁹ *Ibid.*, p. 107.

is, *that* to me is my state of *Nature*. It is as much my natural Situation, as the Body and Mind I find myself to consist of are my natural Self. The attempt seems a fruitless one, to distinguish between what my Maker has made me or done to me, and what he has *suffered* me to be made by my Parents and Teachers, or to be done to me by all the persons whose actions have contributed to make my Situation what it is.⁶⁰

The state of nature is not man's original state, but whatever state the individual finds himself in.

Hey's repudiation of the antithesis of nature and art leads to a re-statement of his attack on the theory of natural rights. Since man's natural state is the situation he is in, Hey says, it follows that the distinction between original natural rights and civil rights is of no significance. Man-made law is the basis of man's most important rights, and such rights are natural though not original. The fact that they are man made does not in the least impair their validity or their practical value:

Thus, for instance, finding myself possessed of the precious Right of personal Security, I consider it as of little consequence, or none at all, whether my Maker invested me with this Right at my birth, or so ordered or permitted the events of the world, that I should be invested with it by a Law which men like myself have made. I was born to it. It forms part of the Situation in which I found myself, when first I became able to observe my Situation. And I trouble not myself to decide whether it is more justly called the Right of a Man or of a Citizen. Whether I call it this or that, I enjoy it with a good conscience and with thankfulness: and, whether I call it this or that, I consider as a Duty to let others enjoy it with me.⁶¹

Whether God works by nature or by art, by direct or indirect means, he is the ultimate source of all things, and there is therefore no antithesis between nature and art, or between natural and civil rights. By giving rights a utilitarian interpretation, Hey continues, it is possible to include natural and civil rights under one general conception, namely, "a Claim to all the Happiness which the Legislator's sagacity can supply".⁶² Rights are the means, while happiness is the end. But it is foolish to make the mistake of the radicals, who overlook the end in emphasizing the means. Thus Hey consciously converts the theory of natural rights into a utilitarian doctrine by rejecting the antithesis of nature and art and by merging natural rights and civil rights together in the principle of the greatest good of the greatest number.

In turning to Edmund Burke's *Appeal from the New to the Old Whigs* (1791) we go from the level of fugitive pamphlets to that of a

⁶⁰ *Happiness and Rights* (York, 1792), p. 139.

⁶¹ *Ibid.*, pp. 139-40.

⁶² *Ibid.*, p. 194.

classic of political theory. It often happens that the ideas which less able writers explain in detail are to a large extent taken for granted and treated briefly by more sophisticated authors. This is true of Burke's treatment of the state of nature and the antithesis of nature and art. He treats both topics explicitly, but it is only parenthetically that he brings them into the main stream of his argument.

Burke's argument, like that of other antiradicals, falls into two parts. First he admits that there was once a state of nature but denies that man's civil rights have anything to do with it. One of the main issues between Paine and Burke is whether or not a majority of the people have the right to resume the power they have once resigned to their government. To decide this question, Burke says, it is necessary to consider what "a people" is. The idea of a people presupposes the formation of a civil society. "In a state of rude Nature there is no such thing as a people."⁶³ The term *rude* shows that he is thinking of a primitive solitary condition of the sort described by Rousseau in the *Second Discourse*. The idea of a people is "wholly artificial", Burke says, and hence the right of a majority of a people to resume the power they have resigned to their government has no basis in "a law of our original nature".

It is only the exigencies of the argument which lead Burke into adopting the antithesis of nature and art, and in the second part of his argument he rejects it emphatically. He continues his discussion of what constitutes a people and maintains against Paine that an aristocracy is a natural and essential part of a people. Paine had contended that an aristocracy is an artificial evil and that it should be abolished. Burke replies that there must be an aristocracy, whose duty it is to "enlighten and protect, the weaker, the less knowing, and the less provided with the goods of fortune". An aristocracy is natural, he says, because it is a necessary and organic part of the state. Civil society must include members who by innate ability, training, and social position are fitted to manage it, and consequently aristocracy is as natural as the state itself.

And the state, he continues, is natural because civil society is man's natural condition, rather than some rude and primitive state. It is man's nature to use reason and art, and nothing is more natural to him than to use them in creating artificial political society:

The state of civil society which necessarily generates this aristocracy is a state of Nature,—and much more truly so than a savage and incoherent

⁶³ *An Appeal from the New to the Old Whigs in Works* (Boston, 1871), IV, 169.

mode of life. For man is by nature reasonable; and he is never perfectly in his natural state, but when he is placed where reason may be best cultivated and most predominates. Art is man's nature. We are as much, at least, in a state of Nature in formed manhood as in immature and helpless infancy. Men, qualified in the manner I have just described, form in Nature, as she operates in the common modification of society, the leading, guiding, and governing part. It is the soul to the body, without which the man does not exist.⁶⁴

The significance of the rejection of the antithesis of nature and art and of the state of nature was much the same for Burke as for English political theory as a whole. Burke's belief that the norm for political action is expediency tempered by prescription and tradition precluded any use of a state of nature, whether juristic or historical. This belief also implied the negation of the antithesis of nature and art. These were ideas which Burke and the other antiradicals had to clear out of their way before they could establish their own theories.

We have seen how the rejection of the abstract state of nature in favor of a primitive historical state of nature was seized upon by a large number of antiradicals as an opportunity to attack the theory of natural rights, and how this attack forced many of the Lockians to modify their theory to meet the criticism. We have seen how other writers, reacting against the primitivism inherent in terming man's original savage condition the state of nature, developed the Aristotelian view that political society is natural to man and that there is no antithesis of nature and art. The changed conception of the state of nature was not, of course, the only or even the most important factor in the revolution of political ideas which occurred during the last half of the eighteenth century in England. No doubt the theory of natural rights would have given way to the various utilitarianisms if the state of nature had never been mentioned in the controversy through which the change evolved. On the other hand, the pattern which the change actually followed was determined chiefly by issues involving the state of nature and the antithesis of nature and art. And since these issues were provoked by the *Second Discourse* more than by any other book, we may justly attribute to Rousseau's essay a dominant influence in determining the general pattern of the disintegration of the theory of natural rights in England.

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⁶⁴ *Ibid.*, pp. 175-76.

